REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS) NOS. 221, 223-24, 229-36, 239, 241-249, 270-77, 286-93/2006

% **Date of Decision** : 15th May, 2007.

TIME WARNER ENTERTAINMENT COMPANY, L.P. & OTHERS .... Appellants in FAO(OS) 221, 223-24, 229-236,239, 270-77, 286-93/2006.

COLUMBIA PICTURES INDUSTRIES INC. & OTHERS ... Appellants in FAO(OS) 241-49/2006.

Through Ms. C.M. Lall with Mr.Ashish Prasad, Advocates.

VERSUS

RPG NETCOM .... Respondent in FAO(OS) 221/2006.

GLOBE & ORS .... Respondent in FAO(OS) 223, 241-49/2006.

WIN CABLE 7 DATACOM PVT.LTD... Respondent in FAO(OS) 224/2006.

SUDHIR SHIVRA JADAV ....Respondent in FAO(OS) 229-36/2006.

SUMESH CHADHA & ORS. ...Respondent in FAO(OS) 270-77/2006.

INDUSIND MEDIA & COMMUNICATIONS LTD. .....Respondent in FAO(OS) 239/2006.

HOME CABLE NETWORK PVT. LTD & ORS. .....Respondent in FAO(OS) 286-93/2006.

Through Ms. Pratibha M. Singh with Ms.Shruti Kakar for respondents in FAO(OS) 221, 241-49/2006.

Mr.Sanjeev Sachdeva with Mr.Sumesh Dhawan and Mr.Chetan Chopra for respondent in FAO(OS) 224, 270-77/06.

Mr. Rajeev Kapoor for respondent no.1 in FAO(OS) 270-77/06.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.

1. These appeals involve a common question of law and arise out of a common impugned Order dated 30th January, 2006 passed in eight different suits. As the facts and issues involved in these Appeals are similar, they are being disposed of by this common Order.

2. The appellants herein are plaintiffs who have filed eight suits seeking permanent injunction against the defendant in each suit. Each defendant is providing cable television services through their associate or affiliated companies, agents, franchises or distributors.

3. The appellants-plaintiffs in the plaint have alleged violation of the provisions of the Copyright Act, 1957 (hereinafter referred to as the Act, for short) by the defendant/ respondent. It is alleged that the appellants-plaintiffs are the owners of copyright in respect of the cinematographic films either as film producers or as assignees and their right as owners of copyright in cinematographic films is being violated by the respondent-defendant who should be stayed from broadcasting the said films on their cable network. Some instances of the alleged violations have been mentioned in the plaint.

4. Learned Single Judge by the impugned Order dated 30th January, 2006 after referring to a Division Bench judgment of this Court in ***Mirabai Films Pvt. Ltd. versus Siti Cable Network and others*** reported in 2003 (26) PTC 473 (Del) DB has passed an interim order restraining the respondent-defendant from telecasting/screening/ exhibiting the said cinematographic films on their network and/or from allowing feed signals to be used by the distributors, franchises, assignees and cable operators for the purpose. However, it has been clarified by the learned Single

Judge that the said interim order would operate only for the films, the list of which has been enclosed with the plaint. Learned Single Judge specifically rejected the prayer of the appellants-plaintiffs that interim injunction order should also be passed in respect of cinematographic films which have not yet been produced and will be made in future. Learned Single Judge referred to Section 18 of the Act and held that copyright in a cinematographic film comes into existence only after the film has been produced and cause of action for any violation in respect of the said cinematographic film would arise only thereafter.

5. We have heard the learned counsel for the appellants and the respondent and will refer to their contentions during the course of this Order.

6. The object of copyright law is to prevent copying of physical material and form in the field of literature and art. It is essentially a negative right given to the author, in the sense that the Act does not

confer the owner with a right to publish his work but the right to prevent third parties from doing that which the owner is solely allowed to do under the Act. The term “author” has been defined in Section 2(d)[1] of the Act in relation to a cinematographic film to mean 'owner of the film at the time of its completion'. For determining the “author” in relation to a cinematographic film we have to find out the time when the film was completed and the person who was the owner of the film at the time of its completion. “Owner” of the film when it is under production or before its completion is not regarded as the author of a cinematographic film within the meaning of Section 2(d) of the Act. Copyright exists in the material object but not in the idea. The object of copyright is not to create any legal or intellectual property rights in the idea but in the final object or the work which is created as a result of the effort made to give a “physical” shape to an idea. Copyright exists in the “work”[2] as defined in

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1. Section 2(d) “author” means,-

(i) in relation to a literary or dramatic work, the author of the work;
(ii) in relation to a musical work, the composer ;
(iii) in relation to an artistic work other than a photograph, the artist;
(iv) in relation to a photograph, the person taking the photograph;
[(v) in relation to a cinematograph film or sound-recording, the producer; and
(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

2 **Section 2. Interpretation**

Section 2(y) of the Act and includes a cinematographic film.

7. Section 13 of the Act provides that subject to the provisions of the said Section and other provisions of the Act, copyright shall subsist throughout India in the classes of works specified in the Section which includes "cinematographic film"[3]. A reading of Section 13

(y) "work" means any of the following works, namely,-

(i) a literary, dramatic, musical or artistic work;
(ii) a cinematograph film;
(iii) a [sound recording];

3 **Section 13. Works in which copyright subsists**.- (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

(a) original, literary, dramatic, musical and artistic works;
(b) cinematograph films; and
(c) [sound recordings].

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless,-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
(ii) in the case of an unpublished work other than a 2 [work of architecture], the author is at the date of making of the work a citizen of India or domiciled in India; and
(iii) in the case of a [work of architecture], the work is located in India.

Explanation. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.
(3) Copyright shall not subsist

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;
(b) in any [sound recording] made in respect of a literary, dramatic or musical work, if in making the [sound recording], copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a [sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the [sound recording] is made.
(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

thus makes it clear that a statutory right has been created in respect of properties mentioned in Section 13, including, cinematographic films. Section 13 of the Act stipulates that right to claim copyright is subject to the provisions of the said Section and the other provisions of the Act and does not exist de hors and outside the Act. It is the right created under the statute and no right outside the said Act can be claimed. This becomes clear when we examine Sections 14, 16 and 55 of the Act. Section 14[4] of the Act states that copyright means exclusive right by

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4 **Section 14. Meaning of copyright**.- For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme,-

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
(ii) to issue copies of the work to the public not being copies already in circulation;
(iii) to perform the work in public, or communicate it to the public;
(iv) to make any cinematograph film or sound recording in respect of the work;
(v) to make any translation of the work;
(vi) to make any adaptation of the work;
(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,

(i) to do any of the acts specified in clause (a);
[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]

(c) in the case of an artistic work,

(i) to reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work;
(ii) to communicate the work to the public;
(iii) to issue copies of the work to the public not being copies already in circulation;
(iv) to include the work in any cinematograph film;
(v) to make any adaptation of the work;
(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,

(i) to make a copy of the film, including a photograph of any image forming part thereof;
(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given

virtue of and subject to the provisions of the Act. Section 16[5] of the Act further stipulates that no person shall be entitled to copyright or any other similar right in any work whether published or unpublished otherwise than under and in accordance with the Act or any other law for the time being in force i.e. when the said Act was enacted, but it shall not affect or abrogate any right based on breach of trust or confidence.

8. Section 55[6] of the Act provides for civil remedies in cases of infringement of copyright. The said provision empowers and authorises owner of a copyright to remedies by way of injunction/damages or

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on hire on earlier occasions;
(iii) to communicate the film to the public;

(e) in the case of a sound recording,

(i) to make any other sound recording embodying it;
(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
(iii) to communicate the sound recording to the public.

Explanation.- For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.]

5 **Section 16. No copyright except as provided in this Act**.- No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

6 **Section 55. Civil remedies for infringement of copyright** .-(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :
Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.
(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.
(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

otherwise as may be conferred, on infringement of a right under the Act in respect of any work.

9. In view of the above provisions, it is not possible to accept the contention of the appellants-plaintiffs that they are entitled to injunction under the law of tort. The Act itself stipulates and specifically confers statutory rights in respect of copyright and also provides for remedies where there is infringement of the statutory right. Section 16 of the Act specifically bars a person from claiming copyright or any other similar right in any work otherwise than in accordance with the provisions of the Act itself or any other law in force. Copyright exists and can be claimed only in accordance with the provisions of the Act or under any law which was in force at the time when the Act was enacted. The appellant-plaintiffs cannot claim copyright and sue for infringement of copyright de-hors the Act. Common law rights under copyright law were abrogated earlier by Section 31 of the Copyright Act,1911, which was enacted to amend and consolidate the law relating to copyright. Section 31 of the Copyright

Act,1911 read as under :

> "**Section 31**. **Abrogation of common law rights.**-No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence."

10. The aforesaid provision, therefore, had the effect of abrogating all common law rights as they existed. A person, therefore, was entitled to copyright only under the provisions of the said Act and any other statutory enactment in force when the Copyright Act, 1911 was enacted. Section 16 of the Act has to be read in the light of Section 31 of the Copyright Act, 1911.

11. Section 17[7] of the Act states that "author" of a work shall be the

7 **Section 17. First owner of copyright**.- Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein :
Provided that- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work, in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

first owner of the copyright therein subject to the proviso. Section 17 read with Section 2(d)(v) of the Act makes it clear that the owner of the film at the time of it's completion is the author of the work and is thus regarded as the first owner of the copyright. As law of copyright does not protect ideas but only the material expression of the idea, i.e. the work, it is not difficult to appreciate why the legislature in defining the term “author“ in relation to cinematographic films has specifically stipulated that the owner of the film at the time of it's completion will mean the author of the film. Ownership rights do not subsist and exist in any person before the film is completed. “Prospective owner” of a cinematographic film while it is under production before completion cannot be regarded as an author or first owner of the film under the Act.

12. Section 18[8] of the Act relates to assignment of copyright in an

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

[(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

8 **Section 18. Assignment of copyright** .-(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to

existing work. Assignment can be done by the owner of the copyright in an existing work. Section 18 permits assignment by a prospective owner, i.e. a person who is not the first owner as defined in Section 17, in a future work. However, as per the proviso, parties can enter into an agreement for assignment of copyright in any future work, but the assignment itself takes place only after “the work” comes into existence and not before. Section 18 therefore gives right to a person, who is not owner of copyright within the meaning of the Act to assign his rights in any future work which will come into existence in future by a contract of assignment. Though an agreement for assignment of a future work is permitted by Section 18 of the Act but the same is subject to the condition that the assignment itself will take effect and come into operation only after the work has come into existence. Before the work comes into existence the assignment does not have any affect. This is necessarily a corollary and flows from the object and purpose of law of copyright which

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limitations and either for the whole term of the copyright or any part thereof :
Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.
(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.
(3) In this section, the expression 'assignee' as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

is to protect the final expression and not an idea.

13. Section 30[9] of the Act incorporates a similar provision and states that owner of a copyright of an existing work or a prospective owner of a copyright in a future works can grant interest by way of licence in writing but a licence granting copyright in a future work shall take effect only when the work comes into existence and not before.

14. Reading of the above provisions of the Act and keeping in mind the object and purpose behind the Act, it cannot be said that any right to claim infringement in a future work exists in any person before a cinematographic film is completed. It is only upon completion of the film that the producer/author of the film becomes the first owner within the meaning of Section 17 read with Section 2(d)(v) of the Act. As stated before, a prospective owner can enter into an agreement to assign rights in a "film" to a third person but the said rights are effective only after the film is completed and not before. Likewise, right to claim infringement on

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9 **Section 30. Licences by owners of copyright**.-The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent :
Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.
Explanation.- When a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

the basis of copyright under Section 55 of the Act has been given to an "owner" as defined in Section 17 of the Act and not to a "prospective owner". In view of the above it cannot be said that "films" which have not been conceived or after being conceived are under production can become subject matter of an infringement action relating to cinematographic films under Section 55 of the Act. Existing owners of cinematographic films cannot under the Act get omnibus interim injunction order for cinematographic films of which they may become owners in future. The Act itself does not postulate and give any such right to the appellants-plaintiffs.

15. In ***Hodgkinson and Corby Ltd and another versus Wards Mobility Services Ltd.*** reported in (1994) W.L.R. 1564, the Chancery Division examined the question of law of tort for infringement of copyright. It was observed as under:-

> "I turn to consider the law and begin by identifying what is not the law. There is no tort of copying. There is no tort of taking a man's market or customers. Neither the market nor the customers are the plaintiff's to own. There is no tort of making use of another's goodwill as such. There is no tort

> of competition. I say this because at times the plaintiffs seemed close to relying on such torts. Fort instance, Mr. Morcom reminded me of the old adage, "Anything worth copying is worth protecting."

16. In the said case, the question whether there exists any general law of tort of unfair competition in England was also examined. It was held that general law of tort of unfair competition as such does not exist in England. We are not concerned with the said question in the present case. The said question and issue does not find any reference in the plaints filed by the appellant herein. It may be stated here that in the case of ***Hodgkinson*** (supra) the Chancery Division, however, accepted that action for passing off which is an action under the law of Tort, is maintainable.

17. Classically the following three requirements should be alleged and established by a plaintiff in an action for passing off based on law of Tort:-

(i) Reputation and/or goodwill,

(ii) Misrepresentation by the defendant causing deception or confusion,

and

(iii) Resultant damages suffered.

18. Action of passing off is maintainable if the action of the defendant is calculated to injure business reputation and goodwill of another trader. This action is also maintainable if damage to reputation and goodwill is seen as a reasonable foreseeable consequence of the action of the defendant. Passing off action can be in the form of quia timet action. Foundation of passing off action is protection of goodwill and reputation. It is not a remedy for invasion of the market name or get up. It is a remedy for invasion of right to property in form of business reputation and goodwill. Goodwill and business reputation is a proprietary right capable of protection. Secondly, deception or deceit on the part of the defendant is an essential ingredient for inviting action of passing off. The objective of passing off action is to restrain a party from passing off his goods etc. as those belonging to another trader, viz. the one who has the reputation or goodwill. The property which is sought to be protected is the business reputation and goodwill that is injured by the said

misrepresentation. Action for passing off can be initiated, where interest of an author or owner of a copyright work in his business reputation and goodwill is damaged by misrepresentation that falls outside the copyright law, i.e. the Act. Passing off action will be maintainable, when the claim is not based on infringement of copyright but damage to reputation and goodwill of the proprietor and the said damage is caused by deceit or misrepresentation by the defendant. In *Copinger and Skone James* on Copyright, on passing off claims by authors and owners, it has been observed that legal recourse to tort of passing off can be initiated when no substantial reproduction of work has taken place or when reference is only made to names or the work of the author/owner as there is no copyright as such in a name or work.

19. In the present case, we need not go into this aspect in detail as in the plaint itself, the appellants have not pleaded and have not made out a case for passing off against the respondent-defendant. The three essential ingredients required to make out a case for passing off have not been set out. Without the said foundation in the plaint the appellants-

plaintiffs in the present Appeal cannot be permitted and allowed to raise the said issue. To claim injunction on the basis of passing off under law of Tort, necessary pleading in the plaint is incumbent. The appellant cannot be permitted to raise this question of passing off in his oral arguments, though the plaint is silent and the contention was not raised before the Single Judge. We are therefore not examining and going into the question whether injunction in respect of a cinematographic film that may be produced in future can be granted in a suit based on action of passing off under law of tort. This question/ issue is not adjudicated and decided.

20. Section 38[10] of the Specific Relief Act, 1963 stipulates that a perpetual injunction may be granted to a plaintiff to prevent breach of an obligation existing in his favour whether expressly or by implication. This is, however, subject to other provisions contained in Chapter II of the Specific Relief Act. Sub-section 3 of the Section 38 of the Specific Relief

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10 **Section 38. Perpetual injunctions when granted** .-(1) Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;
(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
(c) where the invasion is such that compensation in money would not afford adequate relief;
(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Act states that the plaintiff has right to claim injunction when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property. Pollock and Mulla in its commentary on Specific Relief Act (12th Edition) after referring to several decisions has observed as under:-

> "If a plaintiff applies for an injunction in respect of a violation of a right, and the existence of that right or the fact of its violation is denied, he must establish his right at law[11]. The court cannot grant an injunction before a right is acquired, even where it must be acquired within a short period, viz a right of easement.
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> "Mere interference with a legal right does not by itself entitle a plaintiff to an injunction[12], nor does mere inconvenience[13]. There must be violation of an enforceable right[14], and the violation must be of a substantial character."

21. Even otherwise to grant injunction in respect of a prospective or future cinematographic films which are not in existence is fraught with difficulties and can lead to complication and litigation. A vague order of injunction, which is uncertain in its application and likely to cause

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11 *Maxwell versus Hogg (1867) 2 Ch.App.307*
12 *Robson versus Whittingham (1866) 1 Ch.app.442*
13 *Dyke versus Taylor (1861) 3 De GH&J 467*
14 Day versus Brownrigg (1878) 10 Ch.D 294

confusion should not be passed. It will be impossible for the Courts to ensure implementation and compliance of an order which will apply to properties and rights which do not presently exist with the appellants. In this regard, the respondent no.1 had drawn our attention to Lindley on "*Entertainment, Publishing and the Arts*" (IInd Edition), Volume 2. It has been stated in the said edition that most of the cinematographic films are package operations with an independent producer assembling the package and submitting it to a Hollywood studio for financing and distribution. Often financing, fully or partly, is obtained from different sources and thereafter specific rights are assigned, inter se, the producer and the studios/entertainment companies. There is also a possibility of change in ownership when a cinematographic film is under production but the first ownership will vest with the owner of the cinematographic film at the time of its completion.

22. Learned counsel for the appellants had drawn our attention to judgment of a Court of Appeal, Eleventh Circuit, USA in ***Pacific & Southern Company versus Duncan***. In the said case, the respondent

was in the business of selling video taped television programmes which had been earlier been broadcast by different television stations. An infringement action was brought by one of the television stations. For various reasons, the first Court refused to grant injunction. The Court of Appeal gave various findings partly allowing the appeal and also remanding the matter. The Court of Appeal, however, held that this was a classic case in which past infringement and substantive likelihood of future infringement would entitle the copyright holder to permanent injunction in view of the provisions of applicable enactment. It may be noted here that in the said case the defendant therein was admittedly engaged in the business of post broadcast marketing of news items that had been broadcast by various television channels. This was the business of the defendant, who claimed every right to sell taped television programmes which shall be broadcast in future also. The Court of Appeal noticed that the statute in question itself did not impose requirement that the work should be in existence to claim injunction for it empowers courts to issue injunctions on terms which may be deemed

reasonable to prevent or restrain infringement of copyright. Law of copyright in India in relation to cinematographic films has been examined above. We have not examined law of copyright relating to broadcast live or otherwise. These aspects are not required to be examined in this case. The said decision, therefore, is not applicable to the facts of the present case. ***Pacific & Southern Company*** case (supra) relates to broadcasting rights, which may not be similar to rights relating to cinematographic films. We may also refer to the decision in the case of ***Columbia Picture industries versus Robinson*** reported in [1987] Ch. 38, wherein the court refused to grant an injunction extending to copyright in future films because it was often difficult to identify the owner or exclusive licensee of film copyright and it would therefore be impossible for the defendant to know what films were covered.

23. In view of the above, we do not find any merit in the present Appeals and the same are accordingly dismissed.

No costs.

(SANJIV KHANNA)

JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 15, 2007.
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